promptly mailed it to the drawee for payment, but hearing nothing from it made inquiry some ten days after sending it and found it had not been received. After waiting several days longer, further inquiry was made by defendant, but the check had not yet been received by the drawee. Plaintiff was not notified of these facts until nearly a month after he made the deposit. At the request of defendant plaintiff procured a duplicate check to be drawn, which was mailed direct to defendant by the drawer. This check was marked "duplicate," with the notation "Original not payable," and plaintiff called at the bank and indorsed it. Upon presentment payment was refused for lack of funds and defendant charged the amount back against plaintiff's account. Plaintiff sues to recover this amount as part of the balance of his account. *Held,* that the plaintiff could recover. *Aebi* v. *Bank of Evansville* (1905), — Wis. —, 102 N. W. Rep. 329.

Through the negligence of defendant in failing to present the check for payment within a reasonable time, the indorser was discharged from liability, whether his rights were substantially affected by such negligence or not. *Wymore First National Bank* v. *Miller,* 43 Neb. 791; 40 Am. St. Rep. 499; 7 Cyc. 979; 22 L. R. A. 785, note. As to what is a reasonable time must depend upon the circumstances of each particular case, except in so far as the matter is regulated by statute. See DANIEL'S NEGOTIABLE INSTRUMENTS (4th Ed.) Vol. II, Sec. 464. But it was contended here that by indorsing the duplicate check with knowledge of the facts, plaintiff waived the benefit of his discharge. Had the indorser made an express promise to pay with full knowledge of the laches no doubt he would have been held liable. *Tebbetts* v. *Dowd,* 23 Wend. (N. Y.) 379; *Ross* v. *Hurd,* 71 N. Y. 14, 27 Amer. Rep. 1. But waiver being in derogation of the rights of the indorser will be strictly construed. AM. & ENG. ENCY., Vol. V, p. 1049. In the present case the court seems to be well supported by reason and authority that there was no new promise to pay. The duplicate instrument was merely representative as a substitute for the original, and indorsing it created no new contract whatever. A like decision on the same point was reached in the case of *Bank of Gilby* v. *Farnsworth,* 7 N. D. 6. See also *Benton* v. *Martin,* 52 N. Y. 570.

BILLS AND NOTES—INDORSEMENT OF PAYEE FORGED BY DRAWER—RECOVERY BY DRAWEE.—Plaintiff agreed to advance money to A for purchase of cattle by honoring drafts drawn on him by A, each draft to have on the back thereof a bill of sale to plaintiff of the cattle for which it was given in payment. A drew drafts in favor of B et al., indorsed their names thereon, and also filled out and signed with their names the bills of sale on the back. These drafts he procured to be cashed by the defendant bank, which through another bank collected them from plaintiff who did not discover the fraud until some months afterward. Plaintiff then demanded repayment from defendant, and upon the latter's refusal brought suit. *Held,* that plaintiff could recover. *LaFayette & Bro.* v. *Merchants' Bank of Fort Smith* (1905), — Ark. —, 84 S. W. Rep. 700.

The general rule in such cases, where money has been paid under a mistake of fact is that it may be recovered. *Mer. Nat. Bank* v. *Nat. Bank of*

Commerce, 139 Mass. 513; *Thompson* v. *Bank,* 82 N. Y. 1. But to this rule there is the well settled exception that where a draft with a forged indorsement has been put into circulation by the drawer or his agent, no recovery is allowed by the drawee as against the bona fide holder to whom he has paid. *Hortsman* v. *Henshaw,* 11 How. 177. The latter class of cases are held to be analagous to those where a draft is drawn and indorsed in the name of a fictitious payee, in which case the drawer or his principal is estopped to deny its validity. *Meachers* v. *Fort,* 3 Hill (S. C.), 227; *Phillips* v. *Mer. Nat. Bank,* 140 N. Y. 556, 23 L. R. A. 554; *Coggill* v. *Amer. Ex. Bank,* 1 N. Y. 113, 49 Amer. Dec. 310. By virtue of the relations in this case between the drawee and the drawer it was argued that the exception to the general rule as to mistake ought to apply, and the defendant be discharged. But the court held, very justly, it seems, that the bill of sale on the back of the draft was sufficient notice to defendant of the arrangement between drawer and drawee, to have put defendant on its guard and that the bill of sale was really a part of the draft. Thus though the signature on the draft was genuine, the instrument itself was fraudulent and defendant must suffer the loss. *Weisser* v. *Dennison,* 10 N. Y. 69; note 12 L. R. A. 791; 5 Cyc. 547, et seq.

Constitutional Law—Equal Protection of the Laws—Master and Servant—Railroad Fellow Servants' Act.—Action to recover damages for the wrongful death of plaintiff's intestate, a fireman on an engine of defendant, resulting from a collision due to the negligence of the engineer of another train. The action is brought on the Ohio Act of 1890, p. 150, which renders a railroad company liable for the negligence of a superior fellow servant and makes all employees, having control of one or more employees, a superior. The defense was that the law is unconstitutional as class legislation. *Held,* that the classification established by the Act is reasonable and valid. *Kane* v. *Erie R. Co.* (1905), 133 Fed. Rep. 681.

The principle is well established that the states have a right to make discriminations, provided they are founded on a reasonable basis, and it is doubtful whether the classification established by the Act in question is reasonable, because, as it was argued in the lower court (128 Fed. Rep. 474), it gives a remedy to some employees and denies it to others, the test being whether the negligent employee was a superior fellow servant. However, inasmuch as the Act in question has been before the Ohio Supreme Court incidentally and that court has upheld its constitutionality (*R. R. Co.* v. *Shanower* [1904], 70 Oh. St. 166, and *Margrat* v. *R. R.* 51 Oh. St. 130) and the majority of the Ohio inferior courts have upheld it in cases where its validity was directly in question (*Roe* v. *R. R.* 13 Oh. Dec. 260; *Froelich* v. *R. R.* 24 Ohio Cir. Ct. Rep. 359; *Ry. Co.* v. *Hottman,* 25 Oh. Cir. Ct. Rep. 140; but see *Malby* v. *R. R.* 13 Oh. Dec. 280), it seems that the Federal Circuit Court of Appeals is justified in holding the statute constitutional under the maxim that statutes are presumed to be constitutional, unless the contrary is apparent. Before the enactment of the Act of 1890, it was the rule in Ohio that where one employee is put under the control of another, the railroad company is liable for injuries